

APPENDIX F: TERM AND CONDITIONS OF A SPECIAL USE PERMIT FOR GRAZING LIVESTOCK

These terms and conditions, and the Special Use Permit, apply only to those portions of the grazing allotment which lie within Death Valley National Park.

1. The terms and conditions specified in the lease of permit issued by the Bureau of Land Management, that governed grazing on the _____ allotment on October 30, 1994, are the terms and conditions of this permit, except as such terms and conditions may be modified herein.
2. For purposes of this permit, any reference to the "Authorized Officer" in the terms and conditions of the BLM permit existing on October 30, 1994 shall mean the Superintendent of Death Valley National Park, or his or her designee, and any reference to the "Bureau," or "BLM" shall mean the "Bureau of Land Management."
3. The permit shall operate under the general guidance of the Allotment Management Plan (AMP) in effect on October 30, 1994 as amended by the Bureau of Land Management in a Grazing Decision of June 10, 1994. From time to time, the National Park Service, after consultation with the permittee, may modify the AMP as new information is available regarding livestock carrying capacity, analysis of monitoring data, status of range improvements, and general grazing management.
4. All or a portion of the permit can be temporarily suspended by the National Park Service due to drought, fire, flood, or other natural or man-made catastrophe, or to facilitate installation, maintenance or modification of range improvements. When monitoring shows grazing use is causing an unacceptable pattern of use or use exceeds carrying capacity, or when use is not in conformance with prescribed resource goals and objectives as or the biological opinions of the U.S. Fish and Wildlife Service, or the legislative directions, regulations and policies of the National Park Service, the Superintendent shall modify grazing use. In making modifications the Superintendent will follow the terms and conditions, both above and below, notably number three above. When grazing has been temporarily reduced, the unused portion of the permit shall be set aside until the NPS determines that full grazing use can resume.
5. The Authorized Officer may modify existing terms or add additional terms and conditions to this permit, as needed. Before making such modifications, the Authorized Officer will consult with and provide opportunity for comment from the permittee concerning modifying the existing terms or prescribing any added terms. The Authorized officer will notify the permittee of the modification or addition of terms and conditions sixty (60) calendar days prior to adoption of the new or modified term or condition.
6. This permit to graze is attached to the base property identified as such in the AMP and permit in effect on October 30, 1994. For the purposes of this permit, "base property" means the same as the term is defined in 43 CFR 4100.0-5.
7. Under section 306 of the California Desert Protection Act, the permittee may convey to the United States the base property to which this grazing preference is attached. The grazing preference provided by this permit will be terminated upon conveyance of the base property to the United States.

8. If the permittee disposes of base property to which this grazing preference is attached, by sale, gift, will, or otherwise, to a party other than the United States, the acquiring party must apply for a new permit within ninety days IF that party intends to continue grazing under the permit. If the acquiring party intends to continue grazing, then such an applicant must be engaged in the livestock business, must own or control (by contract) the base property and cattle and must submit a legal description and record of ownership or control of the base property. The acquiring party shall accept the terms and conditions of the permit with such modifications as the applicant may request which are approved by the authorized officer. Any other terms and conditions that may be needed will be worked according to the provisions in number three above. An applicant who is not otherwise qualified and who has gained this permit by testamentary disposition must meet the qualifications herein within two years of gaining the base property.
9. Should a third party acquire the base property to which this grazing preference is attached, that party may elect to discontinue grazing, and the Authorized Officer will then cancel such grazing preference and not reissue it.
10. The permittee may dispose of this grazing preference to a third party and, retain title and/or control of the base property to which the grazing preference is attached. The acquiring party may use the grazing preference only if so qualified under condition #8 above, or the party may elect to discontinue use under condition #9 above. The NPS will not issue a new grazing preference to the permittee who retains the base property but disposes of the existing preference that is attached to that base property under this permit.
11. The Authorized Officer may approve the transfer of this permit from one base property owned or controlled by the permittee to another base property owned or controlled by the same permittee.
12. A permittee may apply for, and the Authorized Officer may grant, conservation use of the permit, during which period the permittee will refrain from exercising the privilege of grazing under this permit.
13. Range improvements shall be installed, used, maintained, modified or removed from NPS lands in a manner consistent with grazing management practices. Prior to installing and/or modifying range improvements on NPS lands, the permittee will submit a request to, and obtain the consent of the Authorized Officer. The Authorized Officer, after compliance with the National Environmental Policy Act and other applicable statutes, will notify the permittee in writing, of the decision on a request to install or modify a range improvement. Upon the Authorized Officer's approval of the range improvement, the permittee and the NPS will enter into an agreement describing construction and maintenance responsibilities for the approved project. Any range improvement, or portion thereof, owned by the permittee on October 30, 1994 remains the property of the permittee. Any range improvements constructed under this permit will belong to the United States, EXCEPT for those improvements, or portions thereof that are financed by permittee funds.
14. Range improvements shall be designed, constructed, and maintained under NPS standards and stipulations adapted from the standards currently used by the BLM. In the event the permit is transferred, all range improvements necessary to maintain the permit will be transferred from the permittee to the qualified applicant (See #8). Range improvements cannot be removed from NPS lands without authorization from the Authorized Officer. The Authorized Officer may require the permittee to remove range improvements that conflict with NPS resource management objectives, USFWS biological opinions or with AMP goals.

15. If the Authorized Officer cancels this permit, in whole or in part, or so alters its terms and conditions as to prevent or hamper the use of a range improvement, the permittee, at the discretion of the Authorized officer, may receive reasonable compensation for the adjusted value of their interest in the range improvement including interest in those improvements constructed prior to this permit or, in lieu of such compensation, the Authorized Officer may decide to authorize the permittee to remove the improvement and salvage all materials used as part of the improvement.
16. The permittee is responsible for control and management of his or her livestock while using the permit. The permittee shall comply with State requirements for branding livestock, breed, grade, and number of bulls, health, and sanitation. The Authorized Officer may require counting or tagging of animals to promote orderly grazing administration. The brand and other identifying marks found on the cattle are to be filed with the Authorized Officer prior to each grazing year. Where a permittee does not own the cattle which graze on the permit, the management lease (or pasture agreement) that gives the permittee control must be immediately filed with the Authorized Officer.
17. Permit fees may be refunded if the permittee files for a refund prior to the period of adjusted use. A service charge will be assessed for each transfer of grazing permit and additional billing except for those initiated by the NPS. A service charge shall reflect processing costs and shall be adjusted periodically as costs change.
18. Grazing use will be based on long-term sustainable forage yield and current forage conditions. Grazing use will be in accordance with the current AMP, biological opinions, and NPS resource management conditions, goals and objectives. Each grazing year starts on November 20 and concludes on the following June 30.
19. Pursuant to longstanding NPS policy, all water diverted to, or used on, Federal lands within an NPS unit by the United States or its permittees, will be perfected in the name of the United States. This provision applies only to the use of water, rights to which are established after the October 31, 1994 passage of the California Desert Protection Act of 1994. Water rights established under California State law, prior to October 31, 1994, by an existing or previous permittee, and to which the current permittee holds title or ownership, remains the property of the permittee. Water rights on private lands that were developed in the past, or that may be developed in the future, remain as private property rights.
20. The permittee shall not engage in any of the following practices:
 - a. Violation of any term or condition of this permit, either as issued, or as subsequently modified by the NPS.
 - b. Transfer of this permit, in whole or in part, to any other person without NPS approval.
 - c. Construction, replacement or alteration of a range improvement without NPS approval, or failure to remove a range improvement as directed by NPS.
 - d. Disturbance of any ground on Federal land without first obtaining permission from the NPS, except for minor emergency repairs with the use of hand tools.
 - e. Subleasing. "Subleasing" means the same as the term is defined in 43 CFR 4100.0-5.
 - f. Grazing livestock without an NPS permit.
 - g. Grazing livestock in excess of numbers authorized by this permit.
 - h. Cutting, burning, spraying, destroying or removing vegetation without NPS approval.
 - i. Littering.

- j. Knowingly or willfully making a false statement or representation in grazing applications, range improvement applications, cooperative agreements, actual use reports and/or amendments thereto.
 - k. Violating State livestock board requirements relating to branding of livestock, breed, grade, number of bulls, and health and sanitation requirements.
 - l. Placement of supplemental feed, as defined in 43 CFR 4100.0-5, without NFS approval.
 - m. Violation of any Federal, State or local law relating to conservation and protection of natural or cultural resources or environmental quality.
21. This permit is subject to cancellations or suspension, in whole or in part, with 60 days notice to the permittee by the Authorized Officer, for failure to pay fees, conduct in violation of any provision in terms and conditions #3, 13, 16, and 20 where necessary to fulfill obligations imposed upon law, regulation or policy, or for reasons determined by the NPS Director.
22. The permittee may appeal a decision made under the terms and conditions of this permit to the Regional Director, Pacific West Region, National Park Service, 600 Harrison Street, Suite 600, San Francisco, CA 94017-1372. Such an appeal must be filed in writing with 30 calendar days after the date of notification to the permittee of the action or decision complained of. The terms and conditions of this permit remain in effect during the appeal process. The permittee may appeal a decision of the Regional Director to the NPS Director, Washington, D.C., within 30 calendar days after receipt of notice of the Regional Director's decision. The appeal to the NPS Director will be the final administrative appeal under this permit.

WILDERNESS APPENDIX

The special terms and conditions of this Wilderness Appendix apply only to those portions of the grazing allotment which lie within designated wilderness areas of Death Valley National Park.

1. TRANSPORTATION:

- a. Each non-emergency entry by motorized vehicle or mechanized transport into wilderness must be approved by the Authorized Officer (Park Superintendent or designee).
- b. The Authorized Officer may pre-approve a list of scheduled motorized vehicle or mechanized transport entries into wilderness.
- c. Motorized vehicle or mechanized transport use in wilderness will normally only be permitted to those portions of the wilderness where they had occurred prior to the area's designation as wilderness.
- d. Each emergency motor vehicle or mechanized transport entry must be reported to the Authorized Officer beforehand if possible, or by close of business on the next working day. Phone notification is sufficient, if followed up in writing.
- e. An "emergency," for purpose of entry, exists where there is imminent danger of loss of livestock, severe facility damage, an injured person requiring transport, or a life-threatening situation.
- f. Mechanized transport includes, but is not limited to, any wheeled vehicle.
- g. Entry by foot or by animal needs no prior approval, unless required by regulations (for example, commercial activities or organized groups).

2. MOTORIZED EQUIPMENT:

- a. Use of motorized equipment in wilderness (e.g., chain saws power augers, battery operated equipment, etc.) must be approved by the Authorized Officer.
- b. The Authorized Officer may pre-approve a list of scheduled motorized equipment use in wilderness.
- c. Motorized equipment use in wilderness will normally only be permitted in those portions of the wilderness where they had occurred prior to the area's designation as wilderness.

3. NEW STRUCTURES AND INSTALLATIONS

Construction of new range facilities (e.g., wells, pipelines, troughs, windmills, fences, cabins) in wilderness will be permitted only where the Authorized Officer determines that the facility serves the purpose of natural and/or cultural resource protection.

4. REPLACEMENT OF EXISTING STRUCTURES AND INSTALLATIONS

- a. The Authorized Officer may approve the replacement of existing range facilities in wilderness.
- b. Such replacement generally should be of facilities "in kind."
- c. Replacement of existing facilities in wilderness, where they are visible (i.e., above ground) shall be with natural materials if the use of natural materials does not impose "unreasonable additional costs" on the permittee.

5. MAINTENANCE OF STRUCTURES AND INSTALLATIONS

Maintenance of existing operational facilities requires approval of the Authorized Officer only if use of motorized vehicle, mechanized transport or motorized equipment is necessary.

6. ABANDONMENT OF FACILITIES

The permittee will remove all facilities located in wilderness that the permittee either constructed, or made use of, but which are now abandoned.